IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3693 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SAQUT UMARBHAI BELIM

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3693 of 2001
MS KD PARMAR for Petitioner No. 1
MS B.R.GAJJAR, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/09/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Rajkot

City, Rajkot, vide order dated February 10, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. From the averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2(c) of the Act and 2 cases for the offences falling under Chapter 17 of the IPC are registered against the petitioner which are pending at investigation stage and statements of two witnesses were recorded and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act were exercised by the detaining authority by not disclosing the identity of those witnesses and order of detention came to be passed against the petitioner.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms K.D.Parmar, learned advocate for the petitioner has restricted her arguments to the effect that subjective satisfaction recorded by the detaining authority is not genuine. To bring home her aforesaid submission, she placed reliance on para 8 of the impugned order wherein the detaining authority has observed that the petitioner has applied for bail in connection with the fourth offence but he has not been enlarged on bail. However, in future he may be released on bail and thereafter he may continue similar activity, therefore with a view to maintain the public order, petitioner is detained. The detaining authority had no cogent material at the time of passing the order of detention that the petitioner is likely to be released on bail and therefore subjective satisfaction recorded by the detaining authority is not genuine which vitiate the order of detention. She, therefore, urged to allow the petition by quashing and setting aside the order impugned by setting the petitioner at liberty forthwith.

5. Ms. B.R.Gajjar, learned AGP appearing for the respondent State has opposed the petition though affidavit in reply is not filed. However, she does not dispute the factual aspect with regard to the

observations made in para 8 of the impugned order. She further contended that the activities of the petitioner were prejudicial to the maintenance of public order and therefore, the detaining authority has recorded the statements of two witnesses, besides the four offences registered against the petitioner, and on the basis of the said statements detention order came to be passed which may not be leniently disturb in this petition filed under Article 226 of the Constitution.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. On having perusal of the impugned order, there is no manner of doubt that the detaining authority, in para 8 of the detention order has observed that the petitioner was released in connection with the first three complaints registered against him. Petitioner's application to release him on bail in connection with the fourth complaint came to be rejected and therefore, the petitioner is in judicial custody. However, in future, the petitioner may be released on bail and if in future, petitioner is released on bail he may again continue his antisocial activities which would be prejudicial to the maintenance of public order and therefore, the authority, on considering the said aspect, thought it fit to detain the petitioner under the Act.

8. Supreme Court in the case of AMRITLAL V. UNION GOVERNMENT - 2000 AIR SCW 4203 has observed that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood to be released on bail" is different from "likelihood of his moving an application for bail".

9. Applying the aforesaid principles to the facts of the present case, in the instant case also the detaining authority has considered only the aspect of petitioner being released on bail and thereafter to indulge in similar activity, but on what basis the detaining authority has come to the conclusion that the petitioner would continue in indulging in similar activities is not mentioned in the order of detention. Therefore, order of

detention stands vitiated and the petition deserves to be allowed on this ground alone.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated February 10, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*